

EXHIBIT A

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
4 AT CHARLESTON
5
6

7 _____
8 JO HUSKEY AND ALLEN HUSKEY, :
9 Plaintiffs, : CASE NUMBER
10 v. : 2:12-cv-05201
11 ETHICON, INC., ET AL., :
12 Defendants. :
13 _____

14 TRANSCRIPT OF TRIAL - DAY TWO

15 AUGUST 25, 2014

16 BEFORE THE HONORABLE **JOSEPH R. GOODWIN,**

17 UNITED STATES DISTRICT JUDGE
18
19

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25 Proceedings recorded by machine stenography; transcript
produced by computer.

—GUELCHER - CROSS - THOMAS—

1 process for Prolene. And Ethicon insists that the mixing and
2 compounding equipment be thoroughly cleaned prior to running
3 our material. Do you see that? Right under the additives.

4 A. Under the additives. Yes. I see it.

5 Q. And Aristech, the owner, and Ethicon inspect the
6 equipment before commencing operations; do you see that?

7 A. That's what it says.

8 Q. And once they start the compounding campaign, the first
9 500 to a thousand pounds that are compounded are discarded as
10 a matter of course; do you see that?

11 A. That's a fairly common practice, yeah, I understand.

12 Q. And if the molecular weight of the natural, paren,
13 unpigmented material is acceptable as measured by melt float,
14 we then start collecting material. You know the importance of
15 molecular weight here, don't you?

16 A. I do, but I don't know what's acceptable means, the
17 specification.

18 Q. What's the importance of an appropriate molecular weight
19 for polypropylene?

20 A. Well, the molecular weight has an effect on the
21 properties, but again, it should be within some specification.
22 I don't know what's acceptable --

23 Q. I didn't ask you that question. I'm asking you about
24 molecular weight. And so it's important to have an
25 appropriate molecular weight for the product before it's

—GUELCHER - CROSS - THOMAS—

1 released, you'd agree with that?

2 A. Molecular weight is typically something we put a
3 specification on.

4 Q. Okay. And you know this process hasn't changed over the
5 last 50 years?

6 A. That's what this document says.

7 Q. Do you have any reason to disagree with that?

8 A. There were some changes to the formulation, I understand,
9 the antioxidants were changed in the early 1990s. That was
10 changed. The plant actually changed owners I think a number
11 of times.

12 Q. But the equipment's the same?

13 A. The facility and the equipment seem to be the same.

14 Q. Do you have any idea of the uses of polypropylene Prolene
15 sutures in the human body?

16 A. I know that they're used as sutures for a number of
17 applications.

18 Q. Do you know whether they come in different sizes?

19 A. I know that they come in different sizes.

20 Q. Why do they come in different sizes?

21 A. Well, I'm not a clinician, but I would assume you'd want
22 different sizes for different types of surgeries that are
23 being done.

24 Q. Do you know how many Prolene sutures have been implanted
25 in people around the world since the Sixties?

—GUELCHER - CROSS - THOMAS—

1 A. That's not a statistic that I'm aware of.

2 Q. Billions, with a B?

3 A. Okay.

4 Q. Do you have any idea whether to disagree with that or
5 not?

6 A. I said I don't know what the number is. It sounds like
7 it's --

8 Q. A bunch?

9 A. It's a lot of hamburgers, yeah.

10 Q. That's a legal term. I'm sorry. I apologize.

11 You know from your review of your documents in this
12 case that Ethicon began using Prolene polypropylene in hernia
13 mesh in the mid 1970s, correct?

14 A. Yes, that's my understanding.

15 Q. And the, I think you testified that the mesh used in
16 hernia mesh is a bigger piece of mesh, but exactly the same
17 design as that used in TVT, correct?

18 A. I don't think I said that. I don't think I was comparing
19 hernia to --

20 Q. Let me ask it this way: Do you know how the Ethicon
21 Prolene hernia mesh compares to the Ethicon Prolene mesh used
22 in TVT?

23 A. My understanding is that similar mesh is just used in
24 similar products but cut to different shapes, that's my
25 general understanding.

—GUELCHER - CROSS - THOMAS—

1 Q. Do you know whether the hernia mesh comes in bigger
2 sheets than the mesh that's in the TVT?

3 A. I would presume that it would since it's used for a
4 different use than a sling.

5 Q. And the Prolene used in the hernia mesh is the same
6 chemical composition as the Prolene used in the sutures,
7 correct?

8 A. It's the same composition, but that doesn't mean it's
9 going to respond the same.

10 Q. I understand. I just asked you the composition.

11 A. The composition is the same.

12 Q. Okay. Do you know how many millions of Prolene
13 polypropylene hernia meshes have been implanted in people
14 around the world since 1975?

15 A. I assume it's millions and not billions from what you --

16 THE COURT: I couldn't hear you.

17 THE WITNESS: I said it sounds like it's millions and
18 not billions. I don't know the number.

19 BY MR. THOMAS:

20 Q. Okay. Now, you're aware from your work in this case that
21 Ethicon polypropylene mesh began being used for the treatment
22 of stress urinary incontinence in a TVT mesh in 1996; you know
23 that, don't you?

24 A. That's correct. To my knowledge.

25 Q. And the Prolene mesh used for the treatment of stress

—GUELCHER - CROSS - THOMAS—

1 urinary incontinence in the TVT mesh is the same chemical
2 composition as the Prolene polypropylene mesh in the hernia
3 mesh, correct?

4 A. It's all sold as Prolene mesh, so I would assume it has
5 the same composition.

6 Q. Do you know?

7 A. It's called Prolene, it's Prolene --

8 THE COURT: Do you know?

9 THE WITNESS: Yes. It's the same.

10 BY MR. THOMAS:

11 Q. So the Ethicon TVT mesh used for the treatment of stress
12 urinary incontinence is also the same chemical composition as
13 the Prolene suture, correct?

14 A. It's the same chemical composition.

15 Q. Do you know how many people have received, around the
16 world, the Prolene mesh for the treatment of stress urinary
17 incontinence?

18 A. I don't know the exact number. I think it's in the
19 thousands.

20 Q. Okay. Now, prior to getting involved in litigation of
21 these cases, you had not seen in any of your research that
22 there was a problem with polypropylene mesh, true?

23 A. I'm not studying in my research, research standard on
24 polypropylene mesh --

25 Q. Is that true?

—GUELCHER - CROSS - THOMAS—

1 A. I think it's true. I'm not aware of any.

2 Q. Now, prior to your work on these cases, you had never
3 done research on polypropylene as an implantable biomaterial,
4 true?

5 A. Not researched polypropylene as an implantable
6 biomaterial, but I've --

7 THE COURT: True or not true?

8 THE WITNESS: I've not done research on it as an
9 implantable biomaterial.

10 THE COURT: True or not true?

11 THE WITNESS: True.

12 BY MR. THOMAS:

13 Q. Prior to getting involved in litigation of these cases,
14 you had never published an article on the use of polypropylene
15 in mesh, true?

16 A. That's true.

17 Q. And prior to getting involved in this litigation, you had
18 never published any article on polypropylene specifically,
19 true?

20 A. That's true.

21 Q. And prior to getting involved in this litigation, you had
22 never given a presentation to any of your colleagues on
23 polypropylene, true?

24 A. That's true, but I am this fall.

25 Q. Thank you. And indeed, prior to getting involved in this

—GUELCHER - CROSS - THOMAS—

1 litigation, you had not even studied polypropylene, true?

2 A. No, that's not true. And I know you're going to pull out
3 my deposition on this, but --

4 MR. THOMAS: Excuse me, Your Honor.

5 THE COURT: Just wait. Just wait. Not a question
6 pending right now.

7 THE WITNESS: Yes, sir.

8 MR. THOMAS: May I approach the witness, Your Honor?

9 THE COURT: You may.

10 BY MR. THOMAS:

11 Q. Now, Dr. Guelcher, you've given depositions in this
12 litigation before, correct?

13 A. Yes, I have.

14 Q. And the way depositions work, for the jury, maybe they
15 don't know what a deposition is, you meet with a lawyer in the
16 room and you swear to tell the truth and you answer questions
17 about the litigation before you come in here to testify,
18 correct?

19 A. That's right.

20 Q. And when you're asked questions you give truthful
21 answers?

22 A. I give truthful answers, but sometimes the context of the
23 question can change from the deposition to a trial.

24 Q. If you'll look at your March 25, 2014 deposition on page
25 79, line three, and the question is asked -- do you have that?

—GUELCHER - CROSS - THOMAS—

1 A. I do.

2 Q. Okay. And the question is asked at line three, "And
3 you've not studied polypropylene before your work in this
4 case, correct?"

5 "No. But I've studied oxidating degradation of other
6 polymers?"

7 Did I read that correctly?

8 A. You read it correctly, but I think the word studied is
9 vague.

10 Q. Thank you.

11 A. He's trying to impeach my testimony. Can I give an
12 explanation? I have one.

13 THE COURT: Stop. Now. I'm not going to put up with
14 quarrelling from either side. The answer is "no". You've
15 asked me if you may explain your "no" answer. The answer to
16 that is "yes".

17 THE WITNESS: Thank you, sir. I appreciate it.

18 THE COURT: Go ahead.

19 THE WITNESS: I'm sorry for the court.

20 THE COURT: That's all right. I'm just doing what I
21 do.

22 THE WITNESS: I understand.

23 I think the word studied in different contexts can
24 mean different things. I had not done research on
25 polypropylene prior to this litigation. I'm not hiding

—GUELCHER - CROSS - THOMAS—

1 anything. But I have taught a course, developed a course on
2 polymer science and engineering at Vanderbilt, I taught it for
3 two semesters, other professors teach it now, and we talked
4 about many types of polymers in this course. So I am familiar
5 with polypropylene, but I do agree that I've not studied it in
6 my research. So it's just this word that I am struggling a
7 little bit with. If you asked me if I've done research, I
8 would say no, I have not, but I have studied and I am aware of
9 the material.

10 THE COURT: All right. Next question.

11 MR. THOMAS: Thank you, Your Honor.

12 BY MR. THOMAS:

13 Q. Now, you obviously know that Ethicon's TVT mesh is
14 designed to be implanted in the human body?

15 A. Yes, that's correct.

16 Q. And you know when those meshes are removed from the human
17 body then they're called an explant?

18 A. That's what I was explaining earlier.

19 Q. You have never analyzed a TVT mesh explant manufactured
20 by Ethicon for the treatment of stress urinary incontinence,
21 true?

22 A. I've not had any explant to --

23 Q. True?

24 A. -- characterize, so --

25 Q. I'm sorry. I don't mean to stop you, but --